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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

CITIBANK, N.A., and UNITED BANK OF DENVER NATIONAL ASSOCIATION, as Indenture Trustees, *Petitioners,*

v.

PHOENIX RESOURCES COMPANY, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

DAVIS, GRAHAM & STUBBS
THOMAS S. NICHOLS
ROBERT L. SHANSTROM
2600 Colorado National Bldg.
Denver, CO 80202

Attorneys for Petitioner United Bank of Denver National Association

SHEARMAN & STERLING
JOHN E. HOFFMAN, JR.
Counsel of Record

STEPHEN F. ELLMAN
JOANNA SHALLY
53 Wall Street
New York, NY 10005
(212) 940-3010

KERWIN & ELLIOTT
THOMAS J. KERWIN
1414 Lincoln Center Bldg.
Denver, CO 80202

Attorneys for Petitioner Citibank, N.A.

QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals for the Tenth Circuit err in holding that this Court exceeded its rule-making powers in promulgating Rule 10-215(c)(4) of the Rules of Bankruptcy Procedure, and in declaring such rule to be invalid and void.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the court below were (1) Citibank, N.A. ("Citibank"); (2) United Bank of Denver National Association ("United Bank"); (3) King Resources Company; (4) International Resources Limited; (5) Phoenix Resources Company. See Appendix G for a list of parents, subsidiaries and affiliates of the petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. _____

CITIBANK, N.A., and UNITED BANK OF DENVER NATIONAL ASSOCIATION, as Indenture Trustees, *Petitioners,*

v.

PHOENIX RESOURCES COMPANY, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioners Citibank and United Bank, as Indenture Trustees, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit entered in this proceeding on March 13, 1981.

OPINION IN THE COURT BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit to date is unreported, and is ap-

pended hereto as Appendix A. The Order of the United States District Court for the District of Colorado is unreported and is appended hereto as Appendix B.

JURISDICTION

The judgment and opinion of the United States Court of Appeals for the Tenth Circuit were entered on March 13, 1981. A timely petition for rehearing and suggestion for rehearing en banc was denied on April 21, 1981; and this petition for certiorari was filed within ninety days of that date. This Court has jurisdiction to review the judgment of the Court of Appeals under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS AND BANKRUPTCY RULES INVOLVED

The statutes involved are former 28 U.S.C. §2075 and §249 of the former Bankruptcy Act. The rule involved is Rule 10-215 of the Rules of Bankruptcy Procedure, together with the Advisory Committee's note thereto. These materials are reproduced in Appendix C.

STATEMENT OF THE CASE

An involuntary petition for reorganization pursuant to the provisions of Chapter X of the Bankruptcy Act (the "Act") was filed against King Resources Company ("KRC") in August 1971. All further proceedings took place within the jurisdiction conferred by Section 2 (formerly 11 U.S.C. §11) of the Bankruptcy Act and continued under Section 403 of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, §403, 92 Stat. 2683. Throughout this reorganization proceeding, Citibank and United Bank as indenture trustees under two separate trust indentures, were the sole representatives of approxi-

mately 2,600 holders of $40 million of debentures issued or guaranteed by KRC.[1] These debentures were subordinate in payment to certain commercial loans made by numerous banks, including Petitioners. Claims based on these loans were filed by Citibank and United Bank, acting through their commercial loan departments. These claims were allowed without objection from any party.

A plan of reorganization was approved by the United States District Court for the District of Colorado in May 1977 and was submitted to a vote of the creditors. In August 1977, while the confirmation proceedings were pending, Texas International Company ("TI") made an offer for all senior and trade claims. Citibank and United Bank (acting with respect to their commercial loans and represented by counsel separate and independent from counsel for them as indenture trustees), and most other creditors, accepted the offer. The acceptance of the offer resulted in the transfer of the United Bank and Citibank claims to TI.

The Plan of Reorganization was confirmed by the district court by Order dated October 7, 1977, and on January 6, 1978, the district court ordered the Trustee to turn over the KRC assets to the reorganized company, renamed Phoenix Resources Company ("Phoenix").

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[1] Citibank was the indenture trustee under an Indenture dated as of November 1, 1968, among Citibank, KRC as guarantor and King Resources Capital Corp., N.V., as principal, pursuant to which there were issued for offering outside the United States $15 million principal amount 5-3/4%, Guaranteed (Subordinated) Convertible Debentures due 1988. United Bank was the indenture trustee under an Indenture dated as of November 1, 1968, between United Bank and KRC, pursuant to which KRC issued for offering within the United States $25 million principal amount 5-1/2% Subordinated Convertible Debentures due 1988.

Thereafter, in June 1978, Citibank and United Bank, as indenture trustees, filed their applications for allowance of compensation and reimbursement of fees and expenses in the amount of $556,016.30 and $343,756.78, respectively. In addition, pursuant to the procedures specifically set forth in Bankruptcy Rule 10-215(c)(4), the indenture trustees sought the bankruptcy court's approval of the transfer of their claims to TI. (Appendices D and E). The district judge, on August 29, 1978, from his perspective of eight years of familiarity with the substantial efforts and contributions of the indenture trustees and his knowledge of the TI offer, gave his unequivocal approval of the transactions and held that the trustees' applications were not barred by §249 of the Bankruptcy Act. (Appendix F, 23a).

Phoenix objected to this approval on the sole grounds that §249 prohibited compensation to the indenture trustees, and that this Court exceeded its rulemaking authority in promulgating Rule 10-215(c)(4).[2] Upon reconsideration, the district court disallowed the objections of Phoenix, holding again that the procedure was in accord with Rule 10-215(c)(4) and that the rule was valid. (Appendix B). Phoenix appealed, repeating its argument that Rule 10-215(c)(4) was invalid because its adoption was beyond the power of this Court.

In reversing the order of the district court, the Tenth Circuit accepted Phoenix' argument and held that Rule 10-215(c)(4) "must be regarded as going beyond the enabling legislation, and section 249 must be applied." (Appendix A, 7a).

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[2] Neither Phoenix nor any other party ever alleged any breach of fiduciary duty, or shortcomings of any kind by the indenture trustees. In fact, the contributions to the success of the reorganization made by the indenture trustees were specifically recognized by the trial court. (Appendix E, 24a-25a).

REASONS FOR ALLOWING THE WRIT

There are two basic reasons why review by this Court is required:

First, the Tenth Circuit has, in holding that this Court exceeded its rulemaking powers, entirely disregarded the standards established by *Sibbach v. Wilson & Co.*, 312 U.S. 1 (1941), and *Hanna v. Plumer*, 380 U.S. 460 (1965), for determining the validity of procedural rules. In departing from the *Sibbach* and *Hanna* tests, the Tenth Circuit has created a brand new test — one of combined "separateness" and "importance" — which is both unworkable and so broad that, if it were ratified, the validity of most if not all of the procedural rules promulgated by this Court would be called into question.

Second, in the specific context of the compensation provisions of the Bankruptcy Act, the Tenth Circuit has rejected a strong judicial and legislative trend toward (1) encouraging participation in bankruptcy proceedings by and on behalf of all interested persons, and (2) entrusting supervision of fee awards to the sound discretion of the trial judge familiar with the proceeding, as envisioned by *Leiman v. Guttman*, 336 U.S. 2 (1949). Instead, it has adopted a rigid and mechanical test in the face of statutory and regulatory language specifically invoking the equitable powers of the trial court.

Thus, the Tenth Circuit's opinion has not only decided an important federal question in a way not settled by this Court, but has rendered a judgment in actual conflict with the thrust of this Court's prior decisions, and with that of at least one other circuit. The requisite special and important reasons required by Rule 17 of the Rules of this Court are manifestly present.

ARGUMENT

I. THE TENTH CIRCUIT DISREGARDED THE PROPER TEST FOR DISTINGUISHING BETWEEN SUBSTANCE AND PROCEDURE FOR THE PURPOSE OF DETERMINING THE VALIDITY OF RULES OF BANKRUPTCY PROCEDURE AND CREATED AN UNWORKABLE AND UNFAIR ALTERNATIVE TEST

The Court of Appeals properly recognized that, when the validity of a rule promulgated by this Court is in issue, a decision is required as to whether the matters involved are substantive or procedural, *Sibbach v. Wilson & Co.*, 312 U.S. 1 (1941). In making this determination with respect to Bankruptcy Rule 10-215(c)(4) dealing with compensation to fiduciaries, the court below invented a test of combined importance and separateness. In its opinion, (Appendix A, 5a-6a), it discusses the importance of compensation but goes on to say, (Appendix A, 7a):

> It is obvious that just because compensation is important does not make it substantive. This importance has however led to a separate treatment and use of fees including the attraction of skilled persons into reorganizations. Thus fees are important but more than that they have become a separate element or factor apart from the other elements and have been structured to provide rights which may be relied on by those performing valuable services.

It then concluded that the importance of Rule 10-215(c)(4), when combined with its character as a "separate element" made it "substantive" and therefore void.

The articulated test, however, has never before been expressed by any court. Rather, the applicable standard is that of *Sibbach*, as expanded in *Hanna v. Plumer*,

380 U.S. 460 (1965), which defines a matter as procedural if it involves the "judicial process for enforcing rights," 312 U.S. at 14, or if it is one of the "matters which relate to the administration of legal proceedings." 380 U.S. at 472. But, the appellate court's opinion contains no analysis of this issue, and no recognition of what would seem to be obvious: that a matter can be both separate and important but still relate to the "process" or to "administration," and, therefore, be procedural.[3]

In fact, what the Tenth Circuit has done is to adopt in substance the very test which *Sibbach* rejected. There, in attacking Rule 35, Fed. R. Civ. P., the petitioner had argued that the rule was substantive because it offended "the important right" to freedom from invasion of the person. 312 U.S. at 14. The Court, speaking through Justice Roberts, specifically rejected this importance test, saying, 312 U.S. at 14:

> If we were to adopt the suggested criterion of the importance of the alleged right we should invite endless litigation and confusion worse confounded. The test must be whether a rule really regulates procedure, — the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them. That the rules in question are such is admitted.

Here, in bankruptcy proceedings, the fiduciary has a right to compensation, if appropriately earned. Rule

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[3] In In re Decker, 595 F.2d 185 (3d Cir. 1979), the Supreme Court's definition in *Hanna* was followed in the bankruptcy context. The Third Circuit, consistent with *Hanna*, interpreted the term "procedural" as including "matters which relate to the administration of legal proceedings." 595 F.2d at 189 n.4. Thus, the Tenth Circuit opinion also runs counter to that of the Third Circuit.

10-215(c)(4) makes the trial court responsible for "enforcing rights and duties" and "for justly administering remedy and redress for disregard or infraction of them," the very criteria established by this Court in *Sibbach* for "procedural" rules.

The rejection of the *Sibbach* and *Hanna* tests in favor of an "important/separate" test is an issue of significance on which, we respectfully submit, the Tenth Circuit was wrong, which will inevitably justify Justice Roberts' concern for "endless litigation and confusion worse confounded" and on which review by this Court is necessary.

The implications of the Tenth Circuit standard are far reaching and important. The Court of Appeal's theory that separateness and importance are equivalent to substantive modifications calls into question the validity of dozens of the bankruptcy rules — so many, in fact, that it is not unfair to say that the entire fabric of the rules is threatened. The Advisory Committee's Introductory Note to the Preliminary Draft of the Rules, 1979 Collier Pamphlet Edition, Bankruptcy Rules, Part 2, p. 17 states:

> Rules promulgated pursuant to 28 U.S.C. §2075 supersede laws, including provisions of the Bankruptcy Act, in conflict with such rules after they take effect. Like other rules of court authorized to be prescribed by the Supreme Court under the enabling provisions of Chapter 131 of the Judicial Code, however, they "shall not abridge, enlarge, or modify any substantive right." The Advisory Committee has sought to deal comprehensively in this Preliminary Draft with the subject of practice and procedure in straight bankruptcy cases, and the table of cross references in Appendix II indicates the

considerable number of provisions of the Act that would be superseded or affected in some degree by the proposed rules.

"Appendix II"[4] referred to in the Advisory Committee's Note lists more than 650 impacts of the new rules on the language of the Bankruptcy Act and other statutes and rules. In view of the present opinion, each of these changes must be examined for importance and separateness; and, if these elements exist, the offending rule should be struck down. This misguided opinion should be reviewed by this Court.

II. THE TENTH CIRCUIT, IN INVALIDATING RULE 10-215(c)(4), IMPROPERLY AND UNWISELY ELIMINATED JUDICIAL CONTROL OF FIDUCIARY COMPENSATION IN BANKRUPTCY PROCEEDINGS

The Tenth Circuit in its decision emphasized the significance of the compensation provisions for fiduciaries and others involved in bankruptcy and reorganization efforts (Appendix A, 5a-6a). However, it failed to recognize that, precisely because this significance is so great, flat prohibition should be disfavored and suspect, and that a rule — namely Rule 10-215(c)(4) which fully protects judicial supervision over fee matters — should be regarded as procedural and given every benefit of the doubt, rather than being viewed with a skeptical eye. Placing fee matters entirely beyond the trial court's discretion runs counter to the effort to expand the discretionary role of the bankruptcy courts, and to the historic control exercised over fees by the courts. These principles were expressed in *Leiman v. Guttman, supra.*

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[4] Appendix II appears in 2 COLLIER BANKRUPTCY MANUAL (2d ed. 1974) at App. 17-34.

in which this Court vested the reorganization court with broad and exclusive control over fee applications of parties to reorganization proceedings.

Moreover, the legislative history makes clear that the purpose of the compensation provisions of the Bankruptcy Act was to promote the efficiency and fairness of the reorganization proceeding by encouraging the independent participation by those interests dependent upon court allowances for their compensation. As stated during the hearings on H.R. 12889 (the forerunner of the Bankruptcy Act):

> [i]f it is to be expected that responsible parties are to render effective service in a reorganization procedure, provisions must be made for reasonable compensation to them. To do otherwise would invite into the proceeding less efficient and responsible persons.

Quoted in 6A COLLIER ON BANKRUPTCY §13.01 at 520 n.23 (14th ed. 1977).

The double elements of simple fairness and the importance of representation of every interest in the reorganization process make compensation procedural and a matter "which relates to the administration of legal procedings" rather than to a substantive bankruptcy matter. By denying the trial judge's right to determine fiduciary compensation, the furtherance of these purposes is negated and thwarted.

The mere fact that the rule effected a change is by no means dispositive.[5] The enabling act under which the

[5] Even though the Supreme Court had interpreted §249 in Wolf v. Weinstein, 372 U.S. 633 (1963), to bar all compensation under the present circumstances, a rule changing the result in *Wolf* is not invalid. *Sibbach* shows, 312 U.S. at 11-13, that a rule which changed previous interpretations of the law did not thereby become

rule was adopted specifically contemplated changes and provided that "all laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." (Appendix C). Moreover, both Rule 10-215(c)(4) and §249 of the Bankruptcy Act specifically permitted court approval of transfer of claims, and specified the circumstances. Thus, no new element was added or subtracted by the rule.

In summary, Bankruptcy Rule 10-215(c)(4) does not affect a substantive right. The rule regulates fee awards, a matter related to judicial control of reorganization proceedings, not to a bankruptcy imperative.[6] Fee and compensation matters have always been scrutinized by the courts and made subject to judicial control and approval, exactly as contemplated by Rule 10-215(c)(4) and by the Bankruptcy Reform Act of 1978, 11 U.S.C. §503. Under established equity principles, a court clearly has discretion to allow compensation to an indenture trustee which, faced with an arguable conflict of interest, nonetheless faithfully performs its fiduciary duties in a reorganization proceeding. *In re New York, N. H. & H. R. Co.*, 421 F.Supp. 249 (D. Conn. 1976), *aff'd*, 567 F.2d 166 (2d Cir. 1977). That discretion must be protected.

"substantive"; rather, it was still procedural in character. Even if there is doubt as to the proper classification of a rule, Hanna v. Plumer teaches that rules are valid even though not classifiable as solely procedural. 380 U.S. at 472.

[6] The state courts have held uniformly that the allowance of attorney fees is a procedural matter. Nitchals v. Williams, 225 Kan. 285, 590 P.2d 582 (Kan. 1979); Jeffcoat v. Highway Contractors, Inc., 508 P.2d 1083 (Okla. 1972); Igoe Bros. v. National Surety Co., 112 N.J.L. 243, 169 A. 841 (1934).

CONCLUSION

This petition for a writ of certiorari should be granted; and, upon review, the judgment of the court below should be reversed.

DAVIS, GRAHAM & STUBBS
THOMAS S. NICHOLS
ROBERT L. SHANSTROM
2600 Colorado National Bldg.
Denver, CO 80202

Attorneys for Petitioner United Bank of Denver National Association

SHEARMAN & STERLING
JOHN E. HOFFMAN, JR.
Counsel of Record

STEPHEN F. ELLMAN
JOANNA SHALLY
53 Wall Street
New York, NY 10005
(212) 940-3010

KERWIN & ELLIOTT
THOMAS J. KERWIN
1414 Lincoln Center Bldg.
Denver, CO 80202

Attorneys for Petitioner Citibank, N.A.

APPENDIX

APPENDIX A

PUBLISH
UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 79-1256

IN THE MATTER OF:

KING RESOURCES COMPANY and INTERNATIONAL RESOURCES, LTD., *Debtors,*

KING RESOURCES COMPANY and INTERNATIONAL RESOURCES, LTD., *Debtors-Appellees,*

v.

PHOENIX RESOURCES COMPANY, *Appellant.*

On Appeal From The United States District Court For The District Of Colorado (D.C. Nos. 71-B-2921 and 72-B-644)

Filed March 13 1981

Miles M. Gersh (William R. Fishman and David H. Drennen, on the brief), of Fishman, Gengler & Geman, P.C., Denver, Colorado, for Appellant.

Thomas J. Kerwin, of Kerwin and Elliott, P.C., Denver, Colorado (Jane Anne Murphy of Kerwin and Elliott, P.C., John E. Hoffman, Jr. and Stephen F. Ellman of Shearman & Sterling, New York, New York, with him on the brief), for Appellee Citibank, N.A.

Thomas S. Nichols (Robert L. Shanstrom, with him on the brief), of Davis, Graham & Stubbs, Denver, Colorado, for Appellee United Bank of Denver, N.A.

Before SETH, Chief Judge, SEYMOUR, Circuit Judge, and PALMIERI, District Judge*.

SETH, Chief Judge.

This is an appeal by Phoenix Resources Company, the successor to King Resources Company by a Chapter X reorganization. The appeal raises a question as to the validity of fees-compensation-reimbursement awarded to United Bank of Denver, N.A. and to Citibank, N.A. for their services as indenture trustees during the course of the reorganization.

The trial court made the awards over the objections of the Securities and Exchange Commission and Phoenix Resources. The objections were based on section 249 of the Bankruptcy Act which they asserted prohibited such fees when the fiduciaries had voluntarily sold their individual claims during the course of the proceedings.

The trial court held in substance that section 249 was superseded by Bankruptcy Rule 10-215 which permitted such fees on court approval of the sale of claims.

Appellee banks, as mentioned, were the trustees in indentures issued by King Resources. With the Chapter X proceedings their duties to the indenture holders continued with the added responsibility to protect the holders during the reorganization. This was a difficult task but was not an uncommon one for indenture trustees. The banks were thus active from the outset of the proceedings in the formulation of plans, negotiations with others, and participation in the confirmation hearings. There is nothing in the record to show that the banks sought to be relieved as trustees. The indenture holders ultimately received or will receive shares of stock in

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* Of the United States District Court for the Southern District of New York, sitting by designation.

the successor corporation. There is no suggestion that these holders were not faithfully and diligently represented by the banks.

The indenture trustees as fiduciaries so represented claims against the debtor which in total were approximately 42 percent of pre-petition allowed claims. The trust indentures were by their terms subordinated to the "senior" debts. The principal difference between the position of the indenture holders and the senior debt creditors related to the conversion rights and this was a substantial dispute. Values were changing and an amended plan was approved February 4, 1976. The United Bank sought compensation-fees-reimbursement in the amount of $343,756.78, and Citibank in the amount of $556,016.30.

The problem in this appeal arises from the fact that in the reorganization proceedings these two banks also represented themselves in seeking to recover on debts owed to them by King Resources. Each bank had made loans of about three million dollars to King Resources and the debts arose from these loans. Claims were filed in the estate for these debts along with the other creditors, and the banks participated in such capacity in the formulation of the plan of reorganization, negotiation with other claimants, and in preconfirmation. The plan was confirmed in October of 1977. The claims of the banks were allowed during the course of the proceedings.

The two banks, after the Bankruptcy Court had approved the Plan of Reorganization in May of 1977, decided to sell their individual claims. Thus United Bank in August of 1977 sold to Texas International Company for $3,259,203.59 its claim (T-737). About the same time Citibank sold its claim (T-467) to the same purchaser for $3,328,158.12. No court approval of the sales was sought. Texas International acquired claims from others and apparently bought all the senior debt claims. As mentioned, the banks petitioned under section 242 of the Bankruptcy Act for fees and expenses incurred in the performance of their duties as fiduciaries. Under this section the bankruptcy judge could award "reasonable compensa-

tion" and reimbursement for costs incurred by "indenture trustees" among other fiduciaries. The petitions were in detail with supporting affidavits, statements, and tabulations. These showed all the work done, when and where the services were performed, and by whom, all in great detail. The body of the petition described how beneficial the services were to the indenture holders.

The appellant Phoenix and the Securities Exchange Commission, as mentioned, objected to the petitions on the ground that section 249 of the Bankruptcy Act prohibited the payment of such fees because the banks had voluntarily sold their own individual claims after the proceedings had commenced. In response to the objections, the banks asked the court to retroactively approve the sale of their claims and to award the fees. Hearings were held on several occasions and the court overruled the objections and approved the sale of the claims made approximately a year before.

The judge awarded fees and reimbursement in the amount of $343,757.78 to United Bank, the trustee, for about 25 million dollars of indentures, and $556,016.30 to Citibank as trustee for a 15-million-dollar foreign issue of bearer debentures. In making the award the court in substance held that Bankruptcy Rule 10-215 had replaced or superseded section 249 of the Bankruptcy Act, and further that the Rule permitted retroactive approval of the voluntary sales the banks had made of their own claims. This approval then made it possible to award fees for services as fiduciaries.

The Advisory Committee's Note to the Rule states that "[p]aragraph (4) of subdivision (c) effects a change from §249 of the Act. That section prohibits compensation to a fiduciary or representative who voluntarily bought or sold claims. . . ." The Committee continues and points out that the Rule would permit approval whether the transaction was voluntary or not.

Section 249 of the Bankruptcy Act permitted court approval *only* of *involuntary* transfers of individual claims. If any voluntary transfers were made the fiduciary was automa-

tically barred from receiving compensation. This was the uniform construction given the Act. *See* Wolf v. Weinstein, 372 U.S. 633. Rule 10-215 (c)(4) by its terms permits the fiduciary to be awarded compensation if the court approves *either* a voluntary or involuntary transfer of claims. Thus a very substantial difference exists between the Act and the Rule as to the voluntary transfers with which we are here concerned. The position of the bankruptcy court and the banks can only be supported if Rule 10-215(c)(4) effectively removed the absolute statutory bar. Other issues are urged by appellant but are not herein considered.

The Rules were formulated, approved, and adopted pursuant to a typical enabling statute, 28 U.S.C. §2075. In part it provides for rules which (a) "prescribe . . . practice and procedure . . . " and (b) which do not "abridge, enlarge or modify any substantive right." The procedure for approval of drafts of rules, transmittal to Congress and its action was the same as for Rules of Civil Procedure.

The initial problem is not a matter of construction of the Rule or the Act; instead, the question is whether the Rule is within the limits of the enabling act. Thus does the Rule prescribe practice and procedure and not enlarge, abridge, or modify any substantive right?

The Rule changes the Act as to *voluntary* transfers in that it moves such transactions out of the category of those absolutely prohibited by statute if compensation is expected into one where they may be approved by the court. The 249 prohibition was imposed whether or not there was any wrongdoing in the trading, and whether or not the fiduciary had performed valuable service in its fiduciary capacity. This has to be a very substantial change. It is apparent that only with voluntary transfers could real problems arise.

Fees are a significant part of any bankruptcy legislation. They were a substantial factor in the Bankruptcy Act and its administration. They are a basic consideration to most if not all of those who participated in the administration under Chapter X.

Were it not for the fee and compensation provisions applicable to these Chapter X proceedings for accountants, managers, lawyers, trustees, experts, and fiduciaries the system would not have functioned. Compensation is the lubricant which makes the bankruptcy machinery work when applied in the proper places in the proper amount. The expectation of compensation and the "right" to compensation of those who perform valuable services based on the provisions of statute is for this group and others a substantive matter. It is also substantive in other aspects of bankruptcy. Compensation is a basic, essential, and independent part of the system.

With the ebb and flow of criticism of reorganization fees and compensation, and the demand for controls and limits, fees as such have taken on a different aspect. They became a matter, an element or subject pretty much separate and apart from the others in the mix. They have become a larger, more complex factor in the planning with the growing complexity of businesses and the need for a greater variety of skilled persons in the reorganization. The business here concerned and the "related" activities demonstrate this very clearly. By statutory treatment and usage compensation has thus come to occupy a position as an independent element in reorganizations. Those who in good faith provide valuable services have a right to rely on the provisions for compensation.

The question whether the compensation here considered is procedural or substantive should be examined in the context of bankruptcy proceedings as we have indicated above. The Court in Wolf v. Weinstein, 372 U.S. 633, refers to the compensation problems and abuses by fiduciaries and others which "was one of the principal reasons for the enactment of §77B of the Bankruptcy Act in 1934." The Court said it gave "important new judicial powers to regulate the payment of compensation." Also the Court there notes that the Chandler Act in 1938 "measurably strengthened these powers of judicial superintendence, particularly with respect to corporate re-

organizations, through the new provisions of c. X." Also of significance the Court in *Wolf* said:

> "Chapter X sought also to broaden the participation of interested groups in the reorganization by ensuring compensation to several classes which theretofore often served the estate as volunteers."

This is important in our consideration of compensation.

The extensive and detailed treatment of compensation in the several statutes does not make the subject substantive rather than procedural. It is obvious that just because compensation is important does not make it substantive. This importance has however led to a separate treatment and use of fees including the attraction of skilled persons into reorganizations. Thus fees are important but more than that they have become a separate element or factor apart from the other elements and have been structured to provide rights which may be relied on by those performing valuable services. The petitions of the banks in this proceeding demonstrate this in their detailed description of the extensive and intensive valuable services performed in a variety of capacities, places, and over an extended period of time.

The removal by the Rule of an outright prohibition against receiving compensation was a change in a substantive matter, was an abridgment or modification of substantive rights of the estate and an enlargement of the rights of fiduciaries. The Rule must be regarded as going beyond the enabling legislation, and section 249 must be applied.

We should also consider the substantive-procedure distinctions in cases considering other rules. The parties have discussed Sibbach v. Wilson & Co., 312 U.S. 1, at some length. There the Court considered rights "and duties recognized by substantive law" in its consideration of Rules 35 and 37 of the then "new" Rules of Civil Procedure. The opinion is significant but unfortunately is not helpful on our problem.

In Mississippi Pub. Corp. v. Murphee, 326 U.S. 438, the Court considered Rule 4(f) of the Rules of Civil Procedure

and stated that it "does not operate to abridge, enlarge or modify the rules of decision by which the court will adjudicate its rights." The "rights" in the case are changed and the application of these rights is changed. *See also* Hanna v. Plumer, 380 U.S. 460.

The Third Circuit in Matter of Decker, 595 F.2d 185, considered a burden of proof issue under the Rules. The court considered that the burden was a procedural matter for the Rules. However, we are concerned with quite a different matter not related to the "process of litigation" as therein considered.

The *Erie* v. *Tompkins* cases have, of course, considered attorney fees sought under state law where no such right existed in federal law or such fees are prohibited. Fees in this context are placed in the rule of decision category. Alyeska Pipeline Co. v. Wilderness Society, 421 U.S. 240, clearly does so, and in Toland v. Technicolor, Inc., 467 F.2d 1045 (10th Cir.), we said: "In diversity litigation this court applies state law with respect to the allowance of attorney fees," citing Hardware Dealers Mutual Fire Insurance Co. v. Smart, 293 F.2d 558 (10th Cir.), and Kilpatrick Brothers, Inc. v. International Business Machines Corp., 464 F.2d 1080 (10th Cir.). Bickford v. John E. Mitchell Co., 595 F.2d 540 (10th Cir.), contains a similar holding. Thus in diversity cases generally, and certainly in this circuit, attorney fees are determined by state law and are substantive for diversity purposes.

Congress adopted the Bankruptcy Rules in 1975. It was then considering the Bankruptcy Reform Act which eventually was to abolish section 249, but there is no conclusion to be drawn from the timing of those events. We cannot assume there was any interaction between the two considerations. That Congress may have been considering the repeal of section 249 as part of the extensive revision of the Act is not significant but no connection is shown.

In Charles Gurule v. Alex Wilson, _____ F.2d _____, Nos. 78-2056, 78-2057 (10th Cir.), we have held that attorney

fees in certain federal actions are such a part of the cause that they must be determined as to entitlement and amount before a final judgment is entered.

The banks urge that the Supreme Court in transmitting the rules to Congress demonstrated that Rule 10-215(c)(4) is within the enabling legislation. The Supreme Court has stated otherwise. The Court in Mississippi Pub. Corp. v. Murphee, 326 U.S. 438, 444, said:

> "The fact that this Court promulgated the rules as formulated and recommended by the Advisory Committee does not foreclose consideration of their validity, meaning or consistency."

Also, the Court in Meek v. Centre County Banking Co., 268 U.S. 426, held invalid a General Order in Bankruptcy it had promulgated.

The banks also urge that the Rules were drafted or approved by several august organizations and this should create a presumption that they do not go beyond the enabling act. The groups here concerned and many, many others draft legislation and rules and in so doing perform a great public service, but this cannot be taken by the courts as a guarantee or create a presumption that the product is perfect. The Congress and legislatures also carefully draft legislation. We cannot examine how scholarly the group is and assign a presumption commensurate therewith. All sources of legislation must be treated the same and we must do so here. No one who is actually involved in the drafting process and the give-and-take involved would have it any other way.

We do not consider the issue of abuse of discretion not raised in the trial court, nor whether retroactive approval was possible.

The case must be and is reversed with directions to disallow the fees, compensation, and reimbursements awarded to United Bank of Denver and to Citibank.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

No. 71-B-2921

IN THE MATTER OF
KING RESOURCES COMPANY, *Debtor*

IN PROCEEDINGS FOR REORGANIZATION OF A CORPORATION

Filed November 9, 1978

ORDER

THIS MATTER is before the Court on the objections of Phoenix Resources Company and the Securities and Exchange Commission to the Applications by Citibank, N.A. and United Bank of Denver for Approval of the Voluntary Sale of their Senior Debt Claims against King Resources Company, debtor. On August 29, 1978 the Court entered its Order approving the Application of Citibank and United Bank; accordingly, the renewed objections of Phoenix and the S.E.C. may be treated as in the nature of motions for reconsideration or rehearing of the Courts' previous ruling.

As the S.E.C. recognized in its memorandum on this matter, "the Advisory Committee on Bankruptcy Rules intentionally changed the language of Section 249 to authorize the court to approve retroactively or prospectively voluntary transaction involving debtor's claims or securities by a fee applicant." The procedure followed here by Citibank and United Bank is in accordance with Section 249 of the Bankruptcy Act, 11 U.S.C. §649, and Bankruptcy Rule

10-215(c)(4), and the Court considered all the circumstances and determined that the applications should be granted and that in the light of the Court's approval, the sales of senior debt claims by Citibank and United Bank would not preclude their seeking or being awarded compensation for services rendered in the reorganization proceeding.

The Court has considered and rejected the argument advanced by Phoenix and the S.E.C. that the Supreme Court lacked authority pursuant to its rule making powers to permit the awarding of compensation to an applicant upon Court approval of the transfer of stock or claims of the debtor by the applicant. Indeed, I find it somewhat curious that an administrative agency challenges action by the Judicial Conference, the Supreme Court and the Congress, and I wonder if this strange position is taken with the knowledge of the Department of Justice. The Attorney General represents the government except where Congress otherwise permits, and I ask where Congress granted authority to the S.E.C. to contend the Supreme Court and Congress don't know what they are doing. The S.E.C. would be better advised to stay within its field and to ask for fewer extensions of time to do that which it is supposed to do.

It is therefore ORDERED that the objections of Phoenix Resources Company and the Securities and Exchange Commission to the approval of the Application of Citibank, N.A. and United Bank of Denver be and hereby are denied.

Dated this 8th day of November, 1978.

/s/ FRED M. WINTER
UNITED STATES DISTRICT JUDGE

APPENDIX C

Statutory Provisions and Bankruptcy Rules Involved

1. *Former 28 U.S.C. §2075,* as in effect at the time Bankruptcy Rule 10-215 was promulgated.

> The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure under the Bankruptcy Act.
>
> Such rules shall not abridge, enlarge, or modify any substantive right.
>
> Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May and until the expiration of ninety days after they have been thus reported.
>
> All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

2. *Rules of Bankruptcy Procedure*

> Rule 10-215. Compensation for Services and Reimbursement of Expenses
>
> (c)(4) Denial of Allowances
>
> No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the case in a representative or fiduciary capacity who at any time after assuming to act in such capacity has, without the approval of the court, purchased or sold claims against, or stock of, the debtor or beneficial interests direct or indirect in such claims or stock, or by whom or for whose account such claims, stock, or beneficial interests therein have been otherwise acquired or transferred.

3. *Advisory Committee's Note to Rule 10-215*

> Paragraph (4) of subdivision (c) effects a change from §249 of the Act. That section prohibits compensation to a

fiduciary or representative who voluntarily bought or sold claims or stock whether or not prior or subsequent court approval was obtained. The rule would allow such approval whether the transaction was voluntary or involuntary by vesting discretion in the court which would be in a position to consider all the relevant circumstances.

4. *Section 249 of the Bankruptcy Act, former 11 U.S.C. §649,* repealed, Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, §401, 92 Stat. 2682 (1978).

§649. Statement of claims or stock acquired or transferred after commencement of proceeding.

Any persons seeking compensation for services rendered or reimbursement for costs and expenses incurred in a proceeding under this chapter shall file with the court a statement under oath showing the claims against, or stock of, the debtor, if any, in which a beneficial interest, direct or indirect, has been acquired or transferred by him or for his account, after the commencement of such proceeding. No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the proceedings in a representative or fiduciary capacity, who at any time after assuming to act in such capacity has purchased or sold such claims or stock, or by whom or for whose account such claims or stock have, without the prior consent or subsequent approval of the judge, been otherwise acquired or transferred.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Nos. 71-B-2921 and 72-B-644

IN THE MATTER OF

KING RESOURCES COMPANY and
INTERNATIONAL RESOURCES, LIMITED, *Debtors.*

IN PROCEEDINGS FOR REORGANIZATION OF CORPORATIONS

SUPPLEMENT TO APPLICATION OF CITIBANK, N.A., AS INDENTURE TRUSTEE, FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF FEES AND EXPENSES

---

1. Citibank, N.A., as Indenture Trustee ("Citibank Trustee") has filed its Application for Allowance of Compensation and Reimbursement of Fees and Expenses, dated June 28, 1978 (the "Application"). Citibank respectfully submits this Supplement to said Application.

2. It has come to our attention that an objection may be made to Citibank's Application on the basis of Bankruptcy Rule 10-215(c)(4), in that the sale by Citibank, N.A., as Senior Creditor ("Citibank Creditor"), of allowed claim, No. T-467, in the amount of $3,262,900.12 to Texas International Company for payment of $3,328,158.12, on or about August 9, 1977, was never formally approved by this Court.

3. As appears in the records of these proceedings, Citibank Creditor was a senior creditor of King Resources Company ("KRC"). Citibank Trustee is the Indenture Trustee

under an Indenture, dated as of November 1, 1968, among Citibank, King Resources Capital Corp., N.V., and KRC as Guarantor ("Foreign Indenture") pursuant to which there were issued for offering outside the United States $15 Million principal amount 5-3/4%, Guaranteed (Subordinated) Convertible Debentures due 1988. Citibank Creditor was, throughout these proceedings, represented by separate counsel and no longer appears in these proceedings in view of the sale of the Citibank Creditor claim in August, 1977.

4. As further appears in the record of these proceedings, all of the KRC senior creditors, with three exceptions, sold their claims (aggregating almost $30,000,000) to Texas International Company ("TI"). These claims, including the claim of Citibank Creditor, were sold in response to the offering of TI made to all senior creditors and trade creditors. The fact of the sale was fully disclosed at the confirmation hearing, and the selling price was discussed at that hearing as possible corroborative evidence of the value of the KRC estate. It appears as a matter of record that Citibank Creditor participated in the transfer of its claim to TI upon the same terms offered to all senior and trade creditors, and accepted by all the other selling creditors.

5. Citibank Trustee did not transfer or sell any claims against KRC. Paragraph 21 of the Affidavit of William T. Hayes, dated June 28, 1978, submitted in support of the Application, states:

> "21. Having made the appropriate inquiries, I can state that since August 14, 1971, the date on which these proceedings were commenced, Citibank as Indenture Trustee, has not acquired any beneficial interest, direct or indirect, in any claim against or stock of KRC, and no such beneficial interest has been transferred by or for the account of Citibank, as Indenture Trustee. As appears in the records of these proceedings, on or about August 9, 1977, Citibank, in its capacity as Senior Creditor of KRC, represented by the Extractive and Process Industries Department, transferred an Allowed Claim,

Number T-467, in the amount of the $3,262,900.12 to Texas International Company for payment of $3,328,158.12."

6. We respectfully submit that since Citibank Trustee did not purchase or sell claims against the Estate of the debtor, any objection to its Application premised upon Rule 10-215 (c)(4) is without validity. Nonetheless, should the Court consider any objection on such grounds to be relevant, Citibank Trustee respectfully requests that the Court, for the purpose only of ruling on Citibank Trustee's Application, approve the sale of the claim by Citibank Creditor *nunc pro tunc*.*

Respectfully submitted,

/s/ THOMAS J. KERWIN,
THOMAS J. KERWIN, ESQ.
1250 First of Denver Plaza
Denver, Colorado 80202
Telephone: (303) 571-4442

SHEARMAN & STERLING
JOHN E. HOFFMAN, JR.
STEPHEN F. ELLMAN
53 Wall Street
New York, NY 10005
Telephone: (212) 483-1000

Attorneys For Citibank, N.A. as Indenture Trustee

Dated: August 18, 1978.

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* The Advisory Committee's Note on Bankruptcy Rule 10-215 states, in relevant part:

> "Paragraph (4) of subdivision (c) effects a change from §249 of the Act. That section prohibits compensation to a fiduciary or representative who voluntarily bought or sold claims or stock whether or not prior or subsequent court approval was obtained. The rule would allow such approval whether the transaction was voluntary or involuntary by vesting discretion in the court which would be in a position to consider all the relevant circumstances."

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Nos. 71-B-2921 and 72-B-644

IN THE MATTER OF

KING RESOURCES COMPANY and
INTERNATIONAL RESOURCES, LTD., *Debtor*

In Proceedings For Reorganization of Corporations

APPLICATION FOR APPROVAL PURSUANT TO BANKRUPTCY RULE 10-215(c)(4)

1. The United Bank of Denver ("UBD"), as Indenture Trustee, has previously filed its Application of United Bank of Denver, National Association, as Indenture Trustee, for Payment of Compensation and Reimbursement of Fees and Expenses, for Indemnity and for Allowance of Its Claim Under an Indenture ("Application"). This Application sought, pursuant to the indemnity provisions of the Indenture, compensation and reimbursement of actual expenses incurred by the UBD, in the course of its activities as Indenture Trustee in this proceeding, on two separate and independent bases. *First*, it sought compensation for services rendered and reimbursement for proper costs and expenses incurred in connection with the administration of an estate, pursuant to Section 242(1) of the Bankruptcy Act, and as an expense of administration. *Second*, inasmuch as the Indenture between the debtor King Resources Company ("KRC") and UBD, as Indenture Trustee, is, an executory contract performed during the course of this proceeding, and, inasmuch as the trustee

under the Plan or otherwise did not reject such executory contract, UBD has a direct contractual right under its proof of claim as Indenture Trustee filed on June 15, 1973, to the compensation, reimbursement and indemnity sought.

2. UBD has been advised, through counsel, by Phoenix Resources Company that Phoenix may assert that the Application should not, under Section 249 of the Bankruptcy Act, be considered on the merits, in that no advance approval was given by the Court to the sale by the Commercial Department of the UBD, of Claim No. T-737.[1] However, such approval is not required as a precondition to UBD's right to reimbursement under its proof of claim as an unrejected executory contract. UBD believes that, in any event, the Court can and should approve such sale, thereby authorizing the consideration of the Application on its merits. Under Rule 10-215(c)(4), as interpreted by the Advisory Committee's Note on Bankruptcy Rule 10-215, such subsequent approval may be given.

3. In the event that such approval is deemed required, UBD herewith requests such approval from the Court. UBD submits that approval should be granted for the following reasons:

(a) UBD, as Indenture Trustee, has acted throughout in the sole interests of its debentureholders; it believes it has made significant contributions to their interests and to this proceeding; and, to date, no contention to the contrary has been made.

(b) The Commercial Department of UBD was represented by separate counsel in these proceedings;

---

[1] Claim No. T-737 arose from a loan in the amount of $3,000,000 made by the Commercial Department of the UBD to KRC. Claim No. T-737 was transferred to Texas International Company about August 12, 1977, in response to Texas International Company's tender offer to senior and trade creditors. The consideration was $3,259,203.59.

neither the Commercial Department nor its counsel took any action in this case adverse to the interests of the debentureholders.

(c) The sale of the claim had no adverse effect whatever on the debentureholders represented by the UBD as Indenture Trustee. It was a private and bona fide sale transaction, and neither added to nor detracted from the reorganization estate or any claim against it.

(d) Subsequent developments have shown that the claims sold to Texas International Company fared worse, in a financial sense, than those of the debentureholders receiving stock for their claims. This follows inasmuch as, since the consummation of the Plan, the stock price has been at a level from time to time where debentureholders could have sold for a sum in excess of that realized by the UBD Commercial Department.

(e) The UBD Commercial Department claim was sold in response to a tender offer made to all senior creditors and trade creditors. The transaction was concluded at arms' length, and was fully disclosed at the confirmation hearing. Indeed, under the findings of the Court, it provided corroborative evidence of the insolvency of the KRC estate.

(f) The decision was made by the Commercial Department on a commercial basis, and was not based to any extent whatever on knowledge obtained from the Indenture Trustee or on the advice of Indenture Trustees or their counsel, or in contravention of any position asserted by the UBD as Indenture Trustee.

4. UBD, therefore, requests that its Application be considered on the merits, and that the Court approve, if necessary, the sale by the Commercial Department of the UBD referred to above, in order to permit such consideration.

DAVIS, GRAHAM & STUBBS

/s/ THOMAS S. NICHOLS
Thomas S. Nichols

/s/ ROBERT L. SHANSTROM
Robert L. Shanstrom
2600 Colorado National Bldg.
Denver, CO 80202
Telephone: (303) 892-9400

Attorneys for United Bank of Denver, National Association, Indenture Trustees

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action Nos. 71-B-2921 and 72-B-644

IN THE MATTER OF

KING RESOURCES COMPANY and
INTERNATIONAL RESOURCES LIMITED, *Debtors.*

REPORTER'S TRANSCRIPT OF
HEARING ON FEE APPLICATIONS

VOLUME II

August 29, 1978

Proceedings before the HONORABLE FRED M. WINNER, Chief Judge, United States District Court for the District of Colorado, commencing at 9 a.m., Monday, August 28, 1978, and continuing thereafter, in Courtroom C201, United States. Courthouse, Denver, Colorado.

[83] opinion of the law is, that the rule is invalid.

THE COURT: Will you please answer my question?

MR. PONZIO: If the rule is valid, the Court can consider—

THE COURT: Very well then, I hold in any fashion you wish for purposes of appeal that the rule is valid and that I accept the rule adopted by the United States Supreme Court, and I reject the rule adopted by the Securities and Exchange Commission, and I reject the interpretation of the Securities and Exchange Commission, which interpretation holds that the action of the United States Supreme Court is unlawful. That I reject.

With that, then, we can go ahead, can't we?

MR. PONZIO: Yes, Your Honor.

THE COURT: Fine.

MR. FISHMAN: Judge, may I ask one question, again for the record?

THE COURT: Yes.

MR. FISHMAN: Is the Court approving the application at this time filed by—

THE COURT: Yes, yes.

MR. NICHOLS: Your Honor, needless to say, we agree with the Court that the rule is valid and properly vests the Court with the discretion to consider the application on the merits, and that's all we are asking that the Court do.

[218] THE WITNESS: Thank you.

(Witness excused subject to recall)

THE COURT: I do want to make the comment now that not only do I recognize the difficult situation in which the indenture trustee finds itself and not only do I recognize that an indenture trustee has extreme fiduciary obligations, but I want to comment — and I'm afraid what I said before may not have emphasized this, I may not even have mentioned it — I want to comment and I want to emphasize that irrespective of the compulsions that existed insofar as United Bank and Citibank are concerned from a fiduciary standpoint, the banks through their officers and through able counsel who represent them, went far beyond simply performing their fiduciary duty.

The contributions of each of the indenture trustees to the ability of this Court to ultimately confirm a plan were tremendous.

Had the indenture trustees fought the efforts of Mr. Baer, Mr. Roark and others who contributed so greatly, in the same way that some of the trade creditors did, I don't

think we ever would have had a plan, but I'm sure we wouldn't have had one yet.

Necessarily, I do not wish Citibank well on the appeal they have taken from my ruling. They are wrong on that, but other than that, I think they have done great [219] around here, I don't want anything I have said to be interpreted to mean that these two banks did nothing except protect their own interests and the interests of the beneficiaries of the indentures. Counsel for both of them contributed greatly throughout this proceeding. Counsel for both of them, particularly emphasize, contributed greatly in connection with the valuation hearings, and I don't mean to say they didn't contribute during other parts of the proceedings, but their participation in the examination of the evaluation witnesses, I found to be most helpful. I found some of their examinations, cross-examinations — to be very searching.

It is significant that Mr. Kerwin recalled that quick and dirty phrase. He certainly does pick up important things in lawsuits.

I do want to stress that the indenture trustees, through their counsel, have contributed very substantially to the ability of the Trustee and the Court to get as far as we have in this case.

By saying this, I do not diminish in any way the contributions made by Mr. Baer and Mr. Roark, Mr. Pfeiffer and others but, nevertheless, I don't want the record to reflect that I'm looking at the allowance of the fees — the reimbursement solely from the standpoint of what the indenture trustees and their lawyers have done because of * * *.

APPENDIX G

Rule 28.1 Listing Of Parents, Subsidiaries And Affiliates

Citibank

The parent company for Citibank, N.A. is Citicorp. Attached is a listing of subsidiaries and affiliates as of December 31, 1980 furnished to the Federal Reserve Bank of New York as required for filing the 1980 Annual Report FRY-6 of Citicorp.

Citicorp

Organization Chart Of Subsidiaries And Affiliates
(All are 100% owned or otherwise indicated)
As of December 31, 1980

Citibank International — Chicago
Citibank, N.A. (See Part 2 for its separate holdings)
Citibank (New York State), N.A.
- — Carte Blanche Corporation
  - — Carte Blanche International Ltd.
  - — Prestige Gifts, Inc.
- — Transaction Technology, Inc.
  - — Klaka Corporation

Citicorp Associates, Inc.
(Formerly Financial Equipment Services, Inc.)
- — Automation Resources, Inc.
  - — Lexar Business Communications, Inc.
  - — Lexar Corporation
- — BHC Resources, Inc.
  - — Services Management Group, Inc.
    - — Services Management Group - Illinois, Inc.
- — Capital Markets Sources, Inc.
  - — Central Capital Markets Services, Inc.
  - — Citicorp Data Distribution, Inc.
  - — Government Resources, Inc.
- — Citicorp Financial Services, Inc.
- — Correspondent Resources, Inc.
  (Formerly Citicorp Information Services, Inc.)

— Citicorp Remote Computing Services, Inc.
— CU Resources, Inc.
— Computer Professionals Unlimited, Inc.
— Inter-Continental Computing, Incorporated
— Thrift Resources, Inc.
— Thrift Services, Inc.
— Citi-Mae, Inc.
— FDS/New York Thrift Processing Services, Inc.
— Mutual Data Systems, Inc.
Citicorp Banking Corporation
— Citicorp Capital Investors Ltd.
— Citicorp International Capital, Ltd.
— Citicorp Credit Services, Inc.
— Citicorp Homeowners, Inc.
— Advance Insurance Agency, Inc.
— Advance Life Insurance Agency, Inc.
— Advance Mortgage Brokers, Ltd.
— Advance Properties Corporation
— AMCAL Mortgage Corporation
— First Mortgage Corporation
— Insured Funding Corporation
— Spar, Inc.
— Tretop, Inc.
— Citicorp Industrial Credit, Inc.
— Citicorp Global Lease, Inc.
— Citicorp Omega Lease, Inc.
— Citicorp Leasing (Alyeska), Inc.
— Citicorp Lescaman, Inc.
— Citicorp Person-to-Person, Inc.
(Formerly Nationwide Financial Services Corporation)
— Citicorp Person-to-Person Corporation
(Florida)
— Citicorp Person-to-Person Financial Center, Inc.
(Florida)
— Citicorp Person-to-Person Financial Center
of Florida, Inc.
— Citicorp Person-to-Person Financial Center
(Arizona)

— Citicorp Person-to-Person Financial Center (Montana)
— Citicorp Person-to-Person Financial Center (Utah)
— Citicorp Person-to-Person Financial Center, Inc. (Alabama)
— Citicorp Person-to-Person Financial Center, Inc. (Colorado)
— Citicorp Person-to-Person Financial Center, Inc. (Delaware)
— Citicorp Person-to-Person Financial Center, Inc. (Georgia)
— Citicorp Person-to-Person Financial Center, Inc. (Louisiana)
  — Person-to-Person Insurance Agency, Inc. (Louisiana)
— Citicorp Person-to-Person Financial Center, Inc. (North Carolina)
— Citicorp Person-to-Person Financial Center, Inc. (South Dakota)
  (Formerly Nationwide Financial Corporation of South Dakota)
— Citicorp Person-to-Person Financial Center of Connecticut, Inc.
— Citicorp Person-to-Person Financial Center of Idaho, Inc.
  — Person-to-Person Insurance Agency, Inc. (Idaho)
— Citicorp Person-to-Person Financial Center of Illinois, Inc.
— Citicorp Person-to-Person Financial Center of Nebraska, Inc.
  (Formerly Nationwide Financial Corporation of Nebraska)
— Citicorp Person-to-Person Financial Center of Utah
— Citicorp Person-to-Person Financial Services, Inc. (Colorado)
— Citicorp Person-to-Person Industrial Bank (Colorado)
  (Formerly Fort Collins Person-to-Person Industrial Bank)

— Citicorp Person-to-Person Investments, Inc. (Delaware)
— Citicorp Person-to-Person Mortgage Corporation (Nevada)
— Citicorp Person-to-Person Mortgage Corporation (Ohio)
— Citicorp Washington Financial Center, Inc.
— Citicorp Washington Industrial Loan Company
— Family Guardian Life Insurance Company (Arizona)
— Nationwide Financial Corporation (Delaware)
— Nationwide Financial Corporation of California
— Nationwide Financial Corporation of Missouri
— Nationwide Financial Corporation of Nevada
— Nationwide Financial Corporation of New Mexico
— Person-to-Person Insurance Agency, Inc. (Alabama)
— Person-to-Person Insurance Agency, Inc. (Arizona)
— Person-to-Person Insurance Agency, Inc. (California)
— Person-to-Person Insurance Agency, Inc. (Colorado)
— Person-to-Person Insurance Agency, Inc. (Connecticut)
— Person-to-Person Insurance Agency, Inc. (Florida)
— Person-to-Person Insurance Agency, Inc. (Georgia)
— Person-to-Person Insurance Agency, Inc. (Illinois)
— Person-to-Person Insurance Agency, Inc. (Indiana)
— Person-to-Person Insurance Agency, Inc. (Missouri)
— Person-to-Person Insurance Agency, Inc. (Montana)
— Person-to-Person Insurance Agency, Inc. (Nevada)
— Person-to-Person Insurance Agency, Inc. (New Mexico)
— Person-to-Person Insurance Agency, Inc. (Ohio)
— Person-to-Person Insurance Agency, Inc. (Oregon)
— Person-to-Person Insurance Agency, Inc. (South Carolina)
— Person-to-Person Insurance Agency, Inc. (South Dakota)

— Person-to-Person Insurance Agency, Inc. (Utah)
— Person-to-Person Insurance Agency, Inc. (Virginia)
— Person-to-Person Insurance Agency, Inc. (Washington)
— Person-to-Person Insurance Agency, Inc. (Wyoming)
— Citicorp Retail Services, Inc.
(Formerly Citicorp Custom Credit, Inc.)
— Citicorp Credit, Inc.
— Citicorp Financial, Inc.
— Citicorp Services, Inc.
— Citicorp Translease, Inc.
— Citicorp Nachtwacht Lease, Inc.
— Citicorp Petrolease, Inc.
— Citicorp Sierra Lease, Inc.
— Citicorp Tulip Lease, Inc.
— CitiMex Lease, Inc.
— Citicorp (USA), Inc.
— Citimarlease (Burmah I), Inc.
— Citimarlease (Burmah Liquegas), Inc.
— Citimarlease (Burmah LNG Carrier), Inc.
— Citimarlease (Fulton), Inc.
— Citimarlease (Whitney), Inc.
Citicorp Business Credit, Inc.
Citicorp Community Development, Inc.
— Broadgo, Inc.
— Garp, Inc.
— Krabco, Inc.
— Mission Park Corporation (80%)
— Pimat, Inc.
Citicorp Funding, Inc.
Citicorp International Group, Inc.
— Asia Pacific Capital Corporation Limited (70%)
— Citicorp International Bank Ltd.
— Citicorp International Bank, S.A.
(Formerly Citicorp International Group, S.A.)
— Citicorp International Finance S.A.
— Citicorp International Limited

— Citicorp International Middle East Exempt Company
— Citicorp International (Singapore) Ltd.
— CitiNational Limited (49.9%)
— CitiNational Nominees Pty. Ltd.
— CitiNational Securities Corporation Ltd.
— National Discount Corporation Ltd. (54%)
— Orient Pacific Capital Investment Corporation (49%)
Citicorp International Holdings, Inc.
Citicorp Investment Management, Inc.
Citicorp Management Services, Inc.
Citicorp Overseas Finance Corporation Limited
Citicorp Overseas Finance Corporation N.V.
Citicorp Overseas Service, Inc.
Citicorp PBD, Inc.
Citicorp Private Capital, Inc.
Citicorp Realty Consultants, Inc.
Citilease, Inc.
FNC Realty Corporation
Retail Consumer Services, Inc.
Westchester Conference Center Development Corporation

Equity Holdings Of Citibank, N.A.

Agememnon Incorporated
Banco de Honduras S.A. (97.4%)
Banco Inter-Unido (50%)
Bank of Lebanon and Kuwait S.A.L. (38.5%)
BLT Realty Inc.
Camwil Lease, Inc.
— Citicorp Investor Lease, Inc.
— Citicorp Mutlilease (SEF), Inc.
Carribbean Merchant Bank Ltd.
Citibank (Channel Islands) Limited
Citibank International
(Formerly Citibank Interamerica)
Citibank (Luxembourg) S.A.
Citibank-Maghreb
Citibank N.A. Limited
— Citibank Nominees (Pty.) Ltd.

— Citibank Services (Pty.) Limited
Citibank N.A. Niger S.A.
Citibank Overseas Investment Corporation
(See Part 3 for its Separate Holdings)
Citibank (Zaire) S.A.R.L. (90%)
Citibank Zambia Limited
Citibelsa
Citicard, Inc.
Citicorp Capital Ltd.
Citicorp Interim Services, Inc.
Citicorp Leasing, Inc.
Citicorp Real Estate, Inc.
Citicorp Securities Company, Inc.
Cititrust (Bahamas) Limited
— Albacore Investments, Ltd.
— First National Nominees, Ltd.
— Providence Associates, Ltd.
Cititrust (Cayman) Limited
CityTrust Banking Corporation (40%)
Consumer Services International Corporation
— FIT Beteiligungsgesellschaft mbH
— FIT Beteiligungsgesellschaft and Co. Treuhand KG and Co.
Vermogensverwaltungs KG (62.11%)
(Fomerly C.G. Trinkaus & Burkhardt
Vermogensverwaltungs-Gesellschaft)
(See below for additional ownership)
— FIT Beteiligungsgesellschaft and Co. Treuhand KG
— Kundendkreditbank Kommanditgesellschaft Auf Aktien (41.33%)
(See below for additional ownerships)
— Matrix Ltd.
— Taiwan First Investment & Trust Co., Ltd. (40%)
Coqui Investments, Inc.
Cosmopolitan Realty Corp.
Cuban American Nickel Co. (50%)
— Moa Bay Mining Corp.

Delexco Inc.
DSS Realty Inc.
Far East Bank Limited (76%)
— Far East Bank Nominees Limited
Fast-Pic Photos Corp.
First National City Bank of New York (Nigeria) Limited (The)
FNCB Capital Corporation
— Caddis Corporation
Fonocob Realty Corporation
Grindlays Bank Limited (49%)
Groupement D'Interet Economique "Paris Citicorp Center" (1%)
(See below for additional ownerships)
International Banking Corporation
— Societe Elysees-Boetie
— Citibank, S.A.
— Groupement D'Interet Economique "Paris Citicorp Center" (1%)
(See above and below for additional ownerships)
— Groupement D'Interet Economique "Paris Citicorp Center" (94%)
(See above and below for additional ownerships)
Lotus Blossom Investments, Inc.
Matin Realty, Inc.
Imref S.A. de C.V.
Mercantile Bank of Canada (The) (24.2%)
— Mercantile Canada Finance B.V.
— Mercantile Bank of Canada International N.V., The
— Mercantile Leasing Limited
Mint Julep, Inc. (The)
National City Nominees Ltd.
NCB Trust Ltd.
— Citibank Financial Trust (Ireland) Ltd.
— Citibank London Nominees Limited
— Citibank Nominees (Ireland), Ltd.
— Citibank Trustees Ltd.

— Citibank Trustees (Ireland), Ltd.
— Duddell Finance Ltd.
New York London Finance Company, Ltd.
Office Towers Limited
Orbdem Corporation
Perennially Green, Inc.
Perpro Lease, Inc.
Saudi American Bank (40%)
Woodroofe Gallery, Inc. (The)

Equity Holdings of
Citibank Overseas Investment Corporation

— Arrendadora Finac, S.A. de C.V.
— Arrendadora y Administradora Citycol S.A.
— Compania Colombiana De Financiamientos, S.A. (90.4%)
(See below for additional ownership)
— Representaciones Financieras S.A.
— Asesores de Finanzas, S.A. de C.V.
— Assurantiemaatschappij Financia N.V. (30%)
(See below for additional ownership)
— Atlantic Trailers Carrier Corporation
— Banco Internacional de Colombia, S.A. (49%)
— Banco Internacional De Colombia (Nassau) Limited
— Broad Investment Corporation
— Citicorp Trust Company
— Carte Blanche Australia Limited
— Carte Blanche Deutschland GmbH
— Centaur Investment Corporation
— Citibail S.A.
— Groupement D'Interet Economique "Paris Citicorp Center" (1%)
(See above and below for additional ownerships)
— Citibank Aktiengesellschaft
— FIT Beteiligungsgesellschaft and Co. Treuhand KG and Co.
Vermogensverwaltungs KG (37.89%)
(Formerly C.G. Trinkaus & Burkhardt

Vermogensverwaltungs-Gesellschaft)
(See above for additional ownership)
— Kundenkreditbank Kommanditgesellschaft auf Aktien (49.04%)
(See above for additional ownerships)
— Kredit-und Versicherungs-Vermittlungsgellschaft mbH der KKB
— Mandata GmbH fur Rechtsbesorgung und Inkasso
— WAKA Vermogensverwaltung GmbH
— Citibank (Austria) Aktiengesellschaft (63.9%)
— Citibank Credito, Financiamento e Investimento S.A. (Formerly CityBank Credito, Financiamento e Investimento, S.A.)
— Citibank Finance Limited
— Citibank Financial Trust Ltd.
— Citibank Credit Ltd.
— Citibank Leasing Ltd.
— Citibank Trust Ltd.
— Citibank Assurance Company Limited
— Citibank Trust Nominee Ltd.
— Citicard S.A. Commercial Financiera y de Servicios
— Citicorp Aerolease (IB), Inc.
— Citicorp Canada Finance Co. Ltd.
— Citicorp Carriers, Inc.
— Citicorp Credit
— Citicorp Credit Saipan, Inc.
— Citicorp East-West Services, Inc.
— Citicorp East-West Services Ges. mbH
— Citicorp Finance and Security (Thailand) Ltd.
— Citicorp Finance B.V.
— Citicorp Financial Advisory Service, Inc.
— Citicorp Finanziaria S.p.A.
— Citicorp Gulf Finance Ltd.
— Citicorp Leasing (Deutschland), G.m.b.H.
— Citicorp Leasing Gesellschaft mbH
— Citicorp Leasing International, Inc.
— Arrendadora Banamex S.A. De C.V. (40%)

— Citicorp Canada Limited
  — Citicorp Leasing Canada Limited (60%)
    — Agri Lease Limited
    — Citicorp Industrial Credit (Canada) Limited
    — Medi Dent Service Inc. (The)
    — Nabel Finance Company Limited
  — Citicorp Data Services S.A.
  — Citilease Internacional, S.A. (50%)
  — Indoline Carriers, Inc.
— Citicorp Leasing Nederland, B.V.
— Citicorp Leasing of Puerto Rico, Inc.
— Citicorp Location (France) S.A.
  — Groupement D'Interet Economique "Paris Citicorp Center" (1%)
  (See above and below for additional ownerships)
— Citicorp Ltd.
  — Citicorp Finance Company Limited
    — Citicorp Realty Ltd.
— Citicorp Maritime Lease (SKO), Inc.
— Citicorp S.A.
— Citicorp y Rio-Banco De Inversion, S.A. (70%)
— CitiFinanciera, S.A.
— Citilease, S.A.
— Citybank Distribuidora de Titulos e Valores Mobiliarios, S.A.
— Compagnie Pour le Placement et le Financement S.A.
— Compania Colombiana de Financiamientos, S.A. (9.6%)
  (See above for additional ownerships)
— Compania Exportadora Cityexport S.A. (94.8%)
— Comptoir de Financements Menager Fimen. S.A.
— Corment Carriers S.A.
— Credicard S.A. — Adminstradora De Cartoes De Credito (6.8%)
— DHC Corporation (38.69%)
  — Argos Companhia De Seguros (61.04%) — (See below for additional ownership)
— El Chaco S.A. Financiera
— Famibank S.A. (99%)

— Algemene Hollandse Krediet & Depositobank N.V.
— Assurantiemaatschappij Financia N.V. (70%) — (See above for additional ownership)
— Financia Nederaland N.V.
— Perfina Personalkredit-und-Finanzierungs A.G.
— Financiera Citicorp S.A. (50%) (Spain)
— Financiera Citicorp, S.A. (Dominican Republic)
— First National Finance Limited (75%)
— First National Nippon Shinpan Co., Ltd. (40%)
— FNCB Finance Limited
— FNCB Financial, Ltd.
— FNC Comercio e Participacoes Ltda.
— Argos Companhia De Seguros (19.99%) — (See above for additional ownership)
— Banco Crefisul De Investimento S.A. (44.06%) — (See below for additonal ownership)
— Comtec S.A. Comercio De Materiais De Construcao — Crefisul Predial Ltda.
— Correctora De Seguros Ltda.
— Crefidata S.A. Processamento De Dados
— Crefisul Distribuidora De Titulos e Valores Mobiliarios S.A.
— Crefisul S.A. Credito Financiamiento e Investimento
— Emibra S.A. Empreendimentos Imobiliarios e Brasileiros
— S.N. Crefisul S.A. Distribudora De Titulos e Valores Mobiliarios
— S.N. Crefisul S.A. Sociedade Corretora
— Citicorp Leasing, S.A. Arrendamento Mercantil
— Finaco Ltda. — Administradora De Bens e Servicios
— Omnia Empreendimentos e Participacoes Ltda.
— Citybank Corretora de Seguros S.A.
— RIBA Empreendimentos e Participacoes e Administracao Ltda. (40.48%)
— Banco Crefisul De Investimento S.A. (14.42%) — (See above for additional ownership)
— FNC Corretora de Titulos e Valores Mobiliarios, S.A.

— Foremost Investment Corporation
— Fuji National City Consulting, Ltd.
— Fuyo General Lease Co. Ltd. (33.3%)
  — Chiyoda Enterprise K.K. (30%)
  — Fuyo Lease Company Ltd.
    — Brightfaith Navigation S.A.
    — Jupiter Navigation Company S.A.
    — Oldfair Navigation S.A.
    — Roseleaf Navigation Co., S.A.
    — Rose Root Navigation Co., S.A.
    — Rose Wood Navigation Co., S.A.
    — Sun Lotus Navigation Co., S.A.
  — Nishi-Nippon Denki Service K.K.
— Inarco International Bank N.V.
— International Finance Associates, B.V.
— Inversiones y Adelantos, C.A.
  — Arrendequipos C.A.
  — Citidata, C.A.
— Investors' Finance Corporation (40%)
— Langross Carriers, Inc.
— National City Financial Services
— Nessus Investment Corporation
  — Citicorp Australia Holdings Limited
    — Citicorp Australia Limited
      — Ajax Insurance Company Limited
        — Union Building Society
      — Citicorp Canberra Pty. Limited
      — Citicorp Financial Services Limited
      — Citicorp Wholesale Pty. Limited
      — J.J. Finance Pty. Ltd. (50%)
      — Norper Investments Pty. Ltd. (50%)
      — Person-to-Person Financial Services Pty. Limited
      — Surrey Insurance Company Limited
    — Citicorp Investments Limited
— Nostro Investment Corporation
— Pemlease, Inc.
— Prestamos Presto de Puerto Rico Inc.
— Rentalco

— Ripco S.A.C.I.yF.
— Servicios Integrales, S.A.
— Sociedade Comercial Citibank Leasing Ltda.
— Trinfinance Ltd. (48%)
— Yonder Investment Corporation
  — Famicredit
    (Formerly Citicorp Credit Multiple "CREDIM")
    — Groupement D'Interet Economique "Paris Citicorp Center" (1%)
      (See above and below for additional ownerships)
  — Societe de Credit pour l'Acquisition et l'Amelioration des Immeubles, S.A.
    — Groupement D'Interet Economique "Paris Citicorp Center" (1%)
      (See above for additional ownerships)
    — SCI "Cirque-Champs Elysees"

United Bank

Parent

United Banks of Colorado, Inc.

Affiliates

United Bank of Arapahoe National Association
United Bank of Arvada National Association
United Bank of Aurora
United Bank of Boulder
United Bank of Broomfield
United Bank of Colorado Springs
United Bank of Delta National Association
Bank of Durango
United Bank of Fort Collins National Association
Mesa United Bank of Grand Junction National Association
United Bank of Greeley
Bank of Ignacio
United Bank of Lakewood National Association

United Bank of LaSalle National Association
United Bank of Littleton
United Bank of Longmont
United Bank of Monaco National Association
United Bank of Montrose National Association
United Bank of Pueblo
United Bank of Skyline National Association
United Bank of Steamboat Springs
Fidelity National Life Insurance Company
Lincoln Agency, Inc.
United Banks Service Company
Stout & Co.
Dentru & Co.
Funda & Co.
Seret & Co.
Linway & Co.
Trinsa & Co.
Alpine & Co.
Rommel & Co.